

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ALBERTO JOSE RAMIREZ,

Petitioner,

v.

Civ. No. 15-244 WJ/KK

JAMES MULHERON *et al.*,

Respondents.

**ORDER OVERRULING PETITIONER'S OBJECTIONS TO  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION  
AND DISMISSING PETITIONS WITHOUT PREJUDICE**

THIS MATTER comes before the Court on review of the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD") (Doc. 18), filed March 23, 2016, and Petitioner's Objections to the Clerk of the District Court ("Objections") (Doc. 20), filed April 11, 2016. In his Objections, Petitioner objects to the Magistrate Judge's PFRD, which recommended that his Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Petition") (Doc. 1), and his amended Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Amended Petition") (Doc. 9), be dismissed without prejudice for lack of subject matter jurisdiction. Having considered Petitioner's Objections and the applicable law, the Court finds that the Objections are not well-taken and should be overruled.

When a party files timely written objections to a magistrate judge's recommendation, the district court will conduct a *de novo* review and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). *De novo* review requires the district judge to consider relevant evidence of record and not merely

to review the magistrate judge's recommendation. *In re Griego*, 64 F.3d 580, 583-84 (10<sup>th</sup> Cir. 1995). "[A] party's objections to the magistrate judge's [PFRD] must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. One Parcel of Real Prop., With Buildings, Appurtenances, Improvements, & Contents*, 73 F.3d 1057, 1060 (10<sup>th</sup> Cir. 1996).

Following a *de novo* review of the evidence in the record, the Court finds that Petitioner's Objections are without merit. The Magistrate Judge correctly concluded that Petitioner does not satisfy the "in custody" requirement of 28 U.S.C. § 2254 and that this Court lacks subject matter jurisdiction to consider Petitioner's petitions.

IT IS THEREFORE ORDERED that:

- (1) Petitioner's Objections to the Clerk of the District Court (Doc. 20) are OVERRULED;
- (2) The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 18) are ADOPTED; and,
- (3) Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 1) and amended Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 9) are DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

  
UNITED STATES DISTRICT JUDGE